

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERMAN ROY POLLARD, JR.,

Defendant-Appellant.

UNPUBLISHED

April 25, 2017

No. 331135

Berrien Circuit Court

LC No. 2015-002531-FH

Before: BECKERING, P.J., and MARKEY and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted of carrying a concealed weapon in a vehicle, MCL 750.227(2). On appeal, he argues that there was insufficient evidence to support the jury's verdict because the police did not find a weapon in his car or on his person. However, other evidence was introduced from which the jury could have reasonably concluded that defendant was carrying a concealed weapon in his vehicle just prior to his arrest. Accordingly, we affirm his conviction.¹

Central to the jury's verdict was a credibility contest between defendant and the complaining witness, Daniel Sparks, concerning a dispute on the day of the arrest. Sparks testified that he had been walking down a road in Benton Harbor when defendant drove up from behind him and nearly hit him. A series of altercations then ensued. The initial altercation took place near defendant's home after Sparks followed defendant there. Then, after Sparks left defendant's house defendant followed Sparks and the second altercation took place. Sparks testified that during this second altercation, defendant pointed a gun at him, which he described as a ".38 Special." During this second encounter, Sparks called 911,² gave the dispatcher defendant's license plate number and stated that defendant was pointing a gun at him. He testified that during the 911 call, defendant began to drive away.

In response to the 911 call, Benton Harbor Public Safety Officer Benjamin Ingersoll came to the area and observed defendant standing outside of the subject vehicle which was then

¹ Defendant who was 74 years old and had no prior criminal convictions was sentenced to two days in jail.

² The 911 call was played for the jury.

parked adjacent to a wooded area. Ingersoll then saw defendant get in the car and drive away. When Ingersoll pulled defendant over, a search of his person and his vehicle did not reveal any weapons. However, Ingersoll and other officers returned to the area where Ingersoll had first seen defendant standing by his car where they located a handgun at the base of a nearby tree. Ingersoll testified that the gun was a .357 revolver that was clean, had no dirt or rust on it, and was sitting on top of brush appearing as if it had just been set there.³

Defendant agreed that he and Sparks were involved in a dispute that day and testified that Sparks twice knocked him down. He testified that he did not have a gun at any time during the events and that during the 911 call Sparks lied about defendant having a weapon. Defendant also explained that after the most recent altercation, he had seen Sparks enter the wooded area, and he parked nearby and started walking towards the woods to follow Sparks. However, he thought better of it and returned to his car. He testified that it was as he returned to his car and started driving away that Officer Ingersoll arrived.

In reviewing defendant's challenge to the sufficiency of the evidence, we view "the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Bennett*, 290 Mich App 465, 471-472; 802 NW2d 627 (2010). We resolve all "credibility choices in support of the jury verdict." *People v Cameron*, 291 Mich App 599, 613; 806 NW2d 371 (2011) (quotation marks and citation omitted). "Circumstantial evidence and any reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Allen*, 201 Mich App 99, 100; 505 NW2d 869 (2000). To convict defendant of carrying a concealed weapon in a vehicle, the prosecution must prove beyond a reasonable doubt: "(1) the presence of a weapon in a vehicle operated or occupied by defendant, (2) that defendant knew of the weapon's presence, and (3) that [defendant] was 'carrying it.'" *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999) (citations and quotations omitted). To "carry" means "to hold, transport, or take from one location to another." *People v Terry*, 124 Mich App 656, 660; 335 NW2d 116 (1983).

Sparks's testimony, if believed by the jury, was sufficient to establish all three elements necessary to convict defendant of carrying a concealed weapon: (1) the presence of a weapon in a vehicle operated or occupied by defendant, (2) that defendant knew of the weapon's presence, and (3) that defendant carried the weapon. See *Nimeth*, 236 Mich App at 622. If Sparks's testimony, that following the first altercation, defendant followed him in his car, got out of his car, and confronted him with the pistol by pointing it at him is believed, it establishes that a weapon was present in defendant's car when he followed Sparks from his home, that he knew of the weapon's presence, and that he was carrying the weapon. There was also circumstantial evidence that defendant carried the weapon in his vehicle while knowing of its presence. Ingersoll's testimony established that defendant's car was parked near a large tree next to a vacant lot, and a weapon, similar to the one Sparks testified that he observed defendant pointing

³ A LEIN search of the gun's serial number showed that it was unregistered. Ingersoll testified that he had experience with guns and that a .357 would look similar to a .38 Special.

at him, was found next to that tree without any dirt or debris on top of it as if it had recently been placed there. In addition, the 911 tape was consistent with Spark's testimony. The jury found Sparks's testimony more credible than defendant, a determination that will not be disturbed on appeal. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005) (stating that this Court does not interject itself into the jury's role of determining the credibility, nor interfere with the jury's determination of how much weight to give a witness's testimony). The jury also made reasonable inferences from Ingersoll's testimony that supported its verdict. Accordingly, there was sufficient evidence to support the conviction.

Affirmed.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Douglas B. Shapiro